

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JONATHAN M. BURTON,

Petitioner,

v.

Case No.: 2:20-cv-576-FtM-66MRM

SECRETARY DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

ORDER

On September 1, 2020, the Court dismissed Petitioner John Burton's petition for writ of habeas corpus without prejudice because it mistakenly believed that Petitioner did not timely file an amended petition using the Court's approved form, as the Court had previously directed. (Doc. 6.) After further review, the record demonstrates that on August 28, 2020, Burton delivered to correctional officials for mailing an amended petition on the Court's approved form, which the Clerk received on September 2, 2020.¹ Because Petitioner failed to include the case number on the amended petition, the Clerk opened a new case at case number 2:20-cv-683-38-NPM. Recognizing Petitioner filed this earlier case and had been ordered to file an amended petition, the Court directed the Clerk to refile the amended petition in this action and close the newly opened action. In the interest

¹ After accounting for mailing days and the prison mailbox rule, the amended petition was timely. Fed. R. Civ. P. 6(d); Jeffries v. United States, 748 F.3d 1310, 1314 (11th Cir. 2014).

of justice, the Court will sua sponte permit Burton to proceed on his amended petition.² See McDowell v. Celebrezze, 310 F.2d 43, 44 (5th Cir. 1962) (holding that a district court may afford the type of relief contemplated by Federal Rule of Civil Procedure 60(b) on its own motion).

Accordingly, it is now **ORDERED**:

The Court **VACATES** its September 1, 2020 Order (Doc. 6) dismissing Burton's petition without prejudice, and further directs the Clerk of Court to reopen this case, 2:20-cv-576-FtM-66MRM.

ORDERED in Fort Myers, Florida on November 9, 2020.

A handwritten signature in black ink, reading "John L. Badalamenti". The signature is written in a cursive, flowing style.

JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE

SA: FTMP-2

Copies furnished to:
Counsel of Record
Unrepresented Parties

² Because a dismissal without prejudice does not toll the applicable statute of limitations, Petitioner would not have the benefit of earlier filing date if Petitioner proceeded in case no. 2:20-cv-683-38-NPM